

**STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD**

In re: Application of Wake Robin Corporation)
Renovation of the Skilled Nursing Facility)
And Addition of Six New Rooms)
_____)

GMCB-024-15con

STATEMENT OF DECISION AND ORDER

Introduction

Wake Robin Corporation (Wake Robin, or the applicant) seeks a certificate of need (CON) from the Green Mountain Care Board to renovate its 33-bed skilled nursing facility and to construct a 7,048-square foot addition and six additional skilled nursing rooms. The cost of the project is \$8,170,130. For the reasons outlined below, we approve the application.

Procedural Background

On July 14, 2016, Wake Robin filed a letter of intent to renovate its skilled nursing facility and construct an addition and six new skilled nursing rooms. The Board issued a determination asserting CON jurisdiction over the project on July 26, 2016. The applicant thereafter filed a CON application¹ and request for expedited review. Following public notice during which there were no requests for intervention, the Board granted Wake Robin's request for expedited review.

The Board requested additional information from the applicant on November 4, November 9, and December 12, 2016. The applicant responded to the first two requests on November 18 and to the third request on December 19, 2016. The application was closed on January 6, 2017. Because the project was expedited, the Board did not hold a public hearing.

Findings of Fact

1. Wake Robin is a not-for-profit Continuing Care Retirement Community that has operated in Shelburne since 1994. In exchange for a one-time entrance fee and monthly fixed payments thereafter, Wake Robin residents are entitled to a spectrum of services and amenities for the rest of their lives that begins with residence in independent living accommodations. Life in the Wake Robin community is structured so its residents can age in place. Accordingly, as residents need additional care or services, the Wake Robin community includes Linden Health Center which offers licensed residential care, memory care, and skilled nursing care in "Cedar," a 33-bed skilled nursing facility. On average, residents spend 11.4 years in the Wake Robin community. Application (App.) at Tab 5, p. 1-4; Tab 8, p. 8.

2. Wake Robin is undertaking a large project that includes the construction of 38 independent living apartments and the expansion and renovation of its community center and

¹ Wake Robin submitted a partial application on September 23, 2016. On September 30, 2016, the applicant filed additional application materials.

residential care facility.² The project includes components for which the applicant must obtain a CON: the renovation of the Cedar facility and construction of a 7,048-square foot addition to the facility that will include six additional skilled nursing rooms. App. at Tab 5, pp. 1-2.

3. Wake Robin's skilled nursing facility maintains a consistent high standard of care; it has an overall 5-star CMS rating,³ deficiency-free surveys, and has received a top ranking from *US News and World Report*. App. at Tab 5, p. 2. Because Wake Robin contracts with its residents when they enter the community to provide them with ongoing and appropriate care and housing, its current expansion and the aging of its population necessitate the addition of six skilled nursing beds. App. at Tab 5, pp.1-2; Tab 8, p. 8.

4. The proposed renovations to the skilled nursing facility include eliminating long hallways, reconfiguring space to feel more home-like, upgrading existing resident rooms, common areas and dining rooms, and upgrading the HVAC system. The build-out of the new addition will include replacement of five of the existing skilled nursing rooms plus six additional rooms. The plans include the creation of more common spaces where residents can gather, including common dining rooms and open country style kitchens. App. at Tab 5, p. 3.

5. Wake Robin follows best practice guidelines that support a shift from a medical perspective of care to one that respects and supports nursing facility residents' individual preferences and choices. For example, residents determine the timing of their daily routines such as waking and eating, and can choose activities tailored to individual interests. In addition, Wake Robin staff are given consistent assignments so they can become familiar with a resident's routine and preferences. App. at Tab 5, p. 3.

6. Wake Robin has a palliative care program in place and collaborates with existing home health agencies that provide hospice services. App. at Tab 9, p. 12. Wake Robin provides mental health services to residents, and has 18 beds (not Medicare-certified) for the long term care of residents with dementia and chronic disease. App. at Tab 5, pp. 1-3; Tab 10, p. 13.

7. Wake Robin currently collects data to monitor and analyze health care quality and outcomes, and will continue to do so if the project is approved. Wake Robin will use evidence-based clinical protocols to develop its policies and procedures. App. at Tab 8, pp. 8-9.

8. Wake Robin does not plan to change any services it now offers. With the addition of six beds, the applicant plans to add 2.8 full-time employees (FTEs) in Year Two. App. at Tab 18 (Staffing Projections).

² The construction of the apartments and the expansion and renovation of the community center and residential care facility do not require CON review. *See* 18 V.S.A. 9434(a). Throughout this decision, the Board will refer, unless noted otherwise, to the project components subject to CON review.

³ The Centers for Medicare and Medicaid Services (CMS) ratings are intended to help consumers select and compare Medicare- and Medicaid-certified skilled nursing facilities. *See* Nursing Home Compare website, available at <https://www.medicare.gov/NursingHomeCompare/About/What-Is-NHC.html>; More information about star rating system can be found at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/FSQRS.html>.

9. Wake Robin has engaged Efficiency Vermont to review the planned electrical, lighting and HVAC systems, and will continue to work with Efficiency Vermont as the project proceeds. App. at Tab 8, pp. 9-11. The project complies with the Facility Guidelines Institute (FGI) *Guidelines for Design and Construction of Residential Health, Care, and Support Facilities* (2014 Edition). *Id.*

10. Wake Robin intends to finance the entire project, including those project components not subject to CON review, with unrated, tax-exempt revenue bonds issued through the Vermont Economic Development Authority. Wake Robin will provide \$3,000,000 in equity and anticipates issuing both long- and short-term bonds that will be repaid with proceeds from resident entrance fees for the new independent living apartments. In addition, revenues from the new apartments will be used to pay the \$8,170,130 cost of the components subject to CON review. App. at Tab 6, p. 5; Tab 15, Table 1. There are no Medicaid dollars associated with this project. App. at Tab 5 at 4. Tab 16, Tables 6A and 6B.

11. DAIL has provided Wake Robin with a letter conditionally supporting the skilled nursing facility renovation and addition of six additional skilled nursing rooms, pending CON review. Letter from DAIL (Oct. 24, 2016) at 1-3.

Standard of Review

Vermont's CON process is governed by 18 V.S.A. §§ 9431-9446 and Green Mountain Care Board Rule 4.000 (Certificate of Need). The applicant bears the burden to demonstrate that each of the criterion set forth in 18 V.S.A. § 9437 is met. Rule 4.000, § 4.302(3). We review each criterion below.

Conclusions of Law

We first take note that this CON project differs considerably from other nursing facility projects that this Board has reviewed. Here, all nursing home residents have chosen, at a time when they could live independently, to contract with Wake Robin for a continuum of care and services extending for the rest of their lives. This contractual relationship requires Wake Robin to have enough skilled nursing beds available as members of the community age and need increased levels of care. Under this model, it is necessary that Wake Robin increase the number of skilled nursing beds in the community as it increases independent living capacity, in order to fulfill its contractual obligation to community members.

I.

Under the first statutory criterion, Wake Robin must show that its application is consistent with the health resource allocation plan (HRAP). The HRAP, last published in 2009, identifies needs in Vermont's health care system, resources to address those needs, and priorities for addressing them on a statewide basis. *See* 18 V.S.A. § 9437(1).

In satisfaction of HRAP Standard 1.3, the applicant has sufficiently explained that it is not appropriate for Wake Robin to collaborate with other long term care facilities. Wake Robin is unique in that it is contractually bound to provide care to its own residents and does not accept

nursing residents from any other facility or under any other circumstances. Given this contractual arrangement, it is not feasible that it collaborates with other neighboring facilities. Findings of Fact (Findings) ¶¶ 1, 3.

In satisfaction of HRAP Standard 1.6, Wake Robin will continue to collect and monitor data relating to health care quality and outcomes through data collection and analysis. In addition, it will use evidence-based clinical protocols to develop its policies and procedures, satisfying Standard 1.7. Finding ¶ 7.

Under Standards 1.9 through 1.12 that are specific to construction projects, Wake Robin has shown that its project will meet or exceed Vermont Energy Efficiency Standards, and that the renovations and construction are compliant with the Facility Guidelines Institute (FGI) 2014 Edition. Finding ¶ 9.

Under Standard 3.12, an applicant must show the project will support high quality palliative and end of life care. Wake Robin collaborates with existing home health agencies that provide hospice services. and has a palliative care program in place. Finding ¶ 6.

In satisfaction of Standards 5.2 and 5.4, DAIL has provided Wake Robin with a letter of support and has confirmed the need for the additional six requested beds. Finding ¶ 11. The services offered by Wake Robin will support residents' mental health and well-being, satisfying Standard 4.7. Findings ¶¶ 3,4, 6. Further, consistent with Standard 5.4, Wake Robin has demonstrated that it is sufficiently capitalized and that it can meet anticipated financial and quality obligations. Finding ¶ 10.

We therefore conclude that Wake Robin has met the first criterion.

II.

Under the second criterion, Wake Robin must show that the cost of the project is reasonable, that it can sustain any financial burden likely to result from the project, that costs of care will not unduly increase, and that less expensive alternatives are not feasible or appropriate. 18 V.S.A. § 9437(2).

The record shows that Wake Robin has been in operation as a Continuing Care Retirement Community since 1994, offering a continuum of care to residents who choose to pay an entrance fee and ongoing monthly payments, pursuant to a contract, to ensure they can receive a level of care, services and amenities for the remainder of their lives. Wake Robin has structured the financing of this project with a combination of equity and unrated, tax-exempt revenue bonds issued through Vermont Economic Development Authority, and will repay the debt with fees generated by new residents entering the community. Finding ¶ 10. We find that the applicant has shown that it can sustain the cost of the project.

We also find that the costs of care will not unduly increase, and that less expensive alternatives are not appropriate. As we have already stated, the community care retirement model is unique; residents choose to move into the community prior to the need for nursing care, but

contract with the facility to ensure they will have skilled nursing care if and when it is needed. The renovations, upgrades and additions to the nursing facility enables Wake Robin to remain progressive and better meet the future needs and expectations of residents.

The applicant has satisfied the second criterion.

III.

Under the third criterion, an applicant must show that there is a need for the project that is appropriate for the applicant to provide. 18 V.S.A. § 9437(3). For the following reasons, we find Wake Robin has met this criterion.

Wake Robin has consistently provided high quality nursing care to its residents, as reflected in its five-star CMS ratings and national recognition as a high-quality nursing facility. Finding ¶ 3. DAIL supports the project, conditioned on CON approval, and confirms the need for six additional skilled nursing beds. Finding ¶ 11. Further, as Wake Robin builds additional independent living apartments and its population grows, it will experience a corresponding need for additional skilled nursing beds for its residents, who have contracted with Wake Robin to provide them lifelong care. Findings ¶¶ 1,3. By upgrading the current facility and adding new beds, Wake Robin can continue to offer high quality care, and can accommodate all current and future residents.

Wake Robin has demonstrated that it meets the third criterion.

IV.

Under the fourth criterion, an applicant must demonstrate that the quality of health care will improve as a result of the project. 18 V.S.A. § 9437(4).⁴

Although the quality of health care at the facility is already very good – the Cedar facility consistently receives the highest star rating by CMS for skilled nursing facilities – the upgrades and renovations will further enhance residents’ living environment. Wake Robin’s plans include the elimination of long hallways, for example, so the living space will be more home-like, the HVAC system will be updated to current standards, and more common space will be created for residents to gather. Findings ¶¶ 3,4,5. These changes are expected to further improve quality and resident satisfaction. We therefore conclude that the applicant has met this criterion.

⁴ This criterion may also be satisfied if the applicant can show that the project leads to greater access to care for Vermonters.

V.

To satisfy the fifth criterion, the applicant must show that the project will not adversely affect other services that it offers. 18 V.S.A. § 9737(5). Because this project is an expansion and not a change to the services Wake Robin currently offers, *see* Findings ¶¶ 3,4,5, we conclude that the applicant has satisfied this criterion.

VI.

The sixth criterion requires an applicant to show that the project will serve the public good. 18 V.S.A. § 9737(6). Based on our discussion, above, of each of the other CON criterion, we conclude that Wake Robin has met this criterion.

VII.

Finally, to the extent they are relevant, Wake Robin has satisfied the two remaining criteria. *See* 18 V.S.A. § 9437(7) (applicant must consider affordable, accessible transportation services); 18 V.S.A. § 9437(8) (requires conformance with health information technology plan if application is for purchase of new health information technology).

Conclusion

Based on our decision, above, and subject to the conditions outlined in the certificate of need issued today, we approve the application.

Order

Pursuant to 18 V.S.A. § 9440(d), the Green Mountain Care Board approves the application of Wake Robin Corporation, and a certificate of need shall issue subject to the conditions set forth in that document.

SO ORDERED.

Dated: February 15, 2017 at Montpelier, Vermont

s/ <u>Cornelius Hogan</u>)	
)	
s/ <u>Jessica Holmes</u>)	GREEN MOUNTAIN
)	CARE BOARD
s/ <u>Robin Lunge</u>)	OF VERMONT

Filed: February 15, 2017